

N.D.A.G. Letter to Slorby (Nov. 29, 1985)

November 29, 1985

Mr. Tom P. Slorby
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58702-5005

Dear Mr. Slorby:

Thank you for your letter of November 7, 1985, questioning the validity of a claim made against Ward County by the county superintendent of schools. Apparently, this claim is for meals provided to attendees of a workshop on school bus matters. The question has occurred whether this claim is a valid one and should be allowed by the board of county commissioners.

North Dakota law does require all expenditures of monies by a county to be in accordance with the appropriations of the board of county commissioners. N.D.C.C. §11-23-09. This particular statute also states, in part, as follows:

11-23-09. EXPENDITURES -- BILLS APPROVED --UNEXPENDED
BALANCES. . . All bills in connection with any public office or undertaking
shall be approved by the official or officials in charge of the office or
undertaking before being allowed by the board of county commissioners.

In addition, N.D.C.C. §11-25-01 states that warrants drawn upon the county treasurer for claims against the county shall be issued by the county auditor only upon the authority of properly "audited and allowed claims or orders of the board of county commissioners."

Clearly, the applicable North Dakota statutes require approval of claims against a county prior to the payment of those claims by the county auditor. However, the statutes do not indicate what standards are to be used in determining whether or not the county commission should approve claims presented to it.

As previously indicated, the statutes do indicate that the expenditure of money by a county must be in accordance with the annual appropriations of the board of county commissioners. N.D.C.C. §11-23-09. Furthermore, the county may not loan or give its credit or make donations to or in aid of any individual, association, or corporation except for the reasonable support of the poor. N.D. Const. Art. X, §18.

Except for these specific legal requirements as to the proper use of the county's money, the decision of whether or not a particular claim should be paid is left to the discretion of the board of county commissioners. With this conclusion in mind, it is not possible for the attorney general to substitute his judgment for that of the board of county commissioners

in determining whether or not a particular claim is a valid one and should be paid by the county. Therefore, I am unable to pass judgment on the validity of the claim in question as described in your letter. The legal authority given to make the final decision as to the propriety of the claim rests with the board of county commissioners.

I realize that this conclusion does not assist you and the board of county commissioners in passing upon the validity of the claim presented to the board. However, the Legislature has obviously concluded that the final decision must rest with the board of county commissioners and I am not free to ignore or disturb this particular process.

Sincerely,

Nicholas J. Spaeth

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